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An Ambiguous Pattern

By Tom Wicker

In this early stage of its life, the Carter Administration seems to be something of a hybrid on civil liberties —neither entirely careless of them nor particularly devoted to their protection.

Mr. Carter himself appears to have squelched, for instance, the early zeal of his C.I.A. director, Stansfield Turner, for a law making the disclosure of Government secrets an illegal act. On the other hand, given a chance at his news conference this week to exert some pressure on behalf of the Wilmington Ten, Mr. Carter said he couldn't comment on the specific case, which no doubt was prudent; but he then delivered a ringing endorsement of the "judicial system," of which the Ten consider themselves prominent victims, and into whose dubious performance in the Wilmington case Mr. Carter's Justice Department is looking.

Several other developments further suggest an ambiguous Administration approach to civil liberties questions:

Senator Edward Kennedy, after long haggling with the Justice Department, introduced this week a bill to bring foreign intelligence wiretapping under court control. On balance, as Mr. Kennedy conceded in his introductory remarks, the bill in notable particulars is an advance over a similar measure he introduced last year on behalf of the Ford Administration. Yet, the Senator said, he still harbored "my own serious reservations as to certain sections" of the new bill.

The Carter Administration bill retains the controversial feature of the earlier measure that would permit electronic surveillance of an American citizen without a showing that he or she was committing or about to commit a crime. But the new version, unlike the old, empowers a Federal judge to "go behind" the Administration's certification and demand proof that information being secretly transmitted by a citizen targeted for surveillance is, in fact, harmful to the interests of the United States.

That's a gain, and so is the elimination in the new bill of a vague "disclaimer" of intent to limit any inherent power of the President to wiretap for national security purposes; a similar disclaimer in the Safe Streets Act of 1968 would be repealed. That would leave legislation as the "exclusive source of authority" for any form of electronic surveillance and should quash the notion that a President has some inherent power to bug and tap as he sees fit.

The scope of the new bill also has been expanded to include surveillance in this country by the National Security Administration, which has been virtually unchecked in the past.

But Mr. Kennedy believes the Carter wiretap bill also would permit more persons to be tapped under the non-criminal standard than the Ford version would have, provides less protection for illegal aliens and foreign visitors, and requires less Congressional oversight and public disclosure of electronic surveillance operations and results. These reservations, portending hard bargaining in Congress, appear to be Administration concessions to the security and intelligence agencies.

The Administration also has approved the long-standing plan of the Federal Bureau of Investigation to use its computer center for "message switching"—that is, as a kind of central switchboard through which all the thousands of messages between local and state police agencies would pass.

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The dangers to civil liberties and privacy in giving the F.B.I. such blanket access to all police communications had produced strong opposition to the plan from the Ford Administration, the General Accounting Office, many state and local police agencies, and influential members of Congress, including Representative John E. Moss, the civil liberties watchdog from California.

Carter Administration approval of the message-switching plan came on May 19, according to David Burnham of The New York Times. That was a month before Mr. Carter's special commission suggested five names to him for possible appointment as the new director of the F.B.I. Having conducted such an exhaustive search for the right person to rebuild and bring new leadership to the scandal-shaken F.B.I., it seems strange that Mr. Carter did not wait until the bureau had shown itself to have shed its old, threatening attitudes toward civil liberties before he approved the message-switching scheme.

Still, this is the same Administration that is moving boldly to prosecute F.B.I. agents for past violations of the law. In an otherwise ambiguous pattern, that action most nearly suggests a basic concern for the Bill of Rights.